

EC/South Africa Agreement on Trade, Development and Cooperation: amending the 1999 Agreement

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PURPOSE: to conclude the Agreement between the EC and its Member States, of the one part, and South Africa, of the other part, amending the Agreement on Trade, Development and Cooperation.

PROPOSED ACT: Council Decision.

BACKGROUND: the above-mentioned Agreement between the EC and its Member States and South Africa ('TDCA') entered into force on 1 May 2004. Articles 18 and 103 of the TDCA call for a review of the Agreement within five years of its entry into force. At its meeting of 7 November 2005, the Joint Cooperation Council established the broad lines of the future revision of the TDCA, covering further liberalisation of trade, minor adjustments to the Title on Development Cooperation, updating the wording of several provisions concerning economic cooperation and cooperation in other areas.

On that basis, the Commission submitted a proposal for a negotiating mandate in June 2006. In November 2006 the Council adopted a two-tier Decision giving the Commission two mandates. One was to give guidance to the Commission for revising the Agreement on Trade, Development and Cooperation on the basis of Article 106(1) of the TDCA, which gives the Cooperation Council the power to decide on amendments put forward by any Party. The other was to authorise the opening of negotiations between the Community and its Member States, on the one hand, and the Republic of South Africa, on the other, to revise the Agreement on matters relating to the political dimension of the Agreement and to justice, freedom and security.

However, in the course of the negotiations, for the sake of consistency, both sides agreed to forego the 'lighter' procedure of Article 106(1) of the TDCA, and to negotiate a **single Agreement** amending the TDCA. Consequently, the Commission negotiated this Agreement on the basis of the combined negotiating directives adopted by the Council, and in consultation with the Africa, Caribbean and Pacific (ACP) Working Party and the Africa Working Group. These two bodies were appointed by the Council, according to their respective responsibilities, as the special committees to assist the Commission in its task. The TDCA negotiations on trade and trade-related matters were suspended pending the outcome of the Economic Partnership Agreement (EPA) negotiations. Throughout the negotiations, the Commission ensured that due account was taken of the process for implementing the Strategic Partnership between South Africa and the EU. The agreement was signed on behalf of the Community and Member States on 11 September 2009 in Kleinmond, South Africa in accordance with Council Decision 7437/08.

IMPACT ASSESSMENT: no impact assessment was carried out.

LEGAL BASE: Article 217 in conjunction with Article 218 (6) (a) of the Treaty on the Functioning of the EU.

CONTENT: following the entry into force of the Treaty on the European Union and the Treaty on the Functioning of the European Union, the EU is substituting the European Community for the approval of the agreement. As stipulated in Article 3 of the Agreement, the Parties shall notify each other of the completion of the corresponding approval procedures and the respective instruments of ratification shall be deposited with the General Secretariat of the Council of the EU. As established in Article 4, the

Amending Agreement shall enter into force on the first day of the month following the month in which the Parties notify each other that the necessary procedures have been completed.

The current proposal is for a Council Decision concluding the amending agreement. It contains new provisions on **terrorism, the International Criminal Court, weapons of mass destruction, mercenaries and small arms**. The Commission therefore recommends that the Council adopt the attached Decision.

BUDGETARY IMPLICATION: the proposal has no implications for the Union's budget.